

## **Senate Bill No. 1818**

### **CHAPTER 822**

An act to add Title 12.5 (commencing with Section 14250) to Part 4 of, and to repeal Section 14251 of, the Penal Code, relating to DNA.

[Approved by Governor September 28, 2000. Filed  
with Secretary of State September 28, 2000.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**SB 1818, Speier. DNA data base.**

Existing law establishes the DNA and Forensic Identification Data Base and Data Bank and requires the Department of Justice to be responsible for the management and administration of the data base and data bank identification program. The program includes DNA samples for offenders of specified sex offenses and violent felonies.

This bill would require the Department of Justice to develop a DNA data base for all cases involving the report of an unidentified deceased person or a high-risk missing person, as defined, and to match and compare samples of recovered unidentified deceased persons with those of reported missing persons. The data base would be comprised of DNA data from genetic markers that are appropriate solely for human identification but have no capability to predict biological function. The department would be required to compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from the parents or appropriate relatives of high-risk missing persons, and then to return the evidence to the local coroner after taking a sample of the remains for DNA analysis.

The bill would require the responsible investigating law enforcement agency to inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing and may collect a DNA sample from a personal article of the missing person if available. The investigating agency may not wait any longer than 30 days after a report is made of a missing person under high-risk circumstances to inform the parents or relatives of their right to give a sample. All samples and DNA extracted from a living person would be required to be destroyed after a positive identification is made and a report issued. The bill would make all DNA samples confidential and would authorize disclosure only to specified persons for the purpose of investigating and prosecuting crime. The bill would impose a \$2 fee increase on death certificates issued by local government agencies or the state to fund the "Missing Persons DNA Data Base," to remain in effect until January 1, 2006, or until federal funding for the operation of the data base becomes available before

that date. The bill would provide that the provisions of the bill relating to funding would remain in effect only until January 1, 2006, and as of that date would be repealed, unless a later enacted statute, enacted before January 1, 2006, deletes or extends that date. The death certificate fee increase would begin on and the funds would be directed to the Missing Persons DNA Data Base Fund beginning on January 1, 2001. The funding for the first year would be used to develop the data base and laboratory infrastructure and the department's protocols and personnel. The department would be required to begin case analysis in 2002. By increasing the duties of local officials, this bill would impose a state-mandated local program.

Additionally, this bill would make persons who collect, process or store DNA or samples used for DNA testing, as specified, and who violate the provisions of the bill relating to disposal or confidentiality, liable to the DNA donor for civil damages of \$5,000 plus attorney's fees and costs. This bill also would make it a misdemeanor for a person who collects, processes, or stores DNA or samples used for DNA testing to violate the disposal and confidentiality requirements, punishable by imprisonment in a county jail. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares the following:

(a) That unidentified remains and unsolved missing persons cases constitute a critical problem for law enforcement and victims' families in the State of California.

(b) Hundreds of people, both children and adults, vanish each year under suspicious circumstances, and their cases remain unsolved. Meanwhile, coroners retain dozens of remains each year that cannot be identified. Families of missing persons must live with no sense of closure, even though their loved one may have already been found.



(c) The Legislature finds that new technology can play an invaluable role in identifying these remains through deoxyribonucleic acid (DNA) analysis.

(d) In order to identify these remains and bring closure to missing persons cases, the Legislature enacts the “Missing Persons DNA Data Base.” This data base shall be used to identify remains and to locate missing persons. The intention of this data base is to identify remains to bring closure to the families of missing persons.

SEC. 2. Title 12.5 (commencing with Section 14250) is added to Part 4 of the Penal Code, to read:

#### TITLE 12.5. DNA

14250. (a) (1) The Department of Justice shall develop a DNA data base for all cases involving the report of an unidentified deceased person or a high-risk missing person.

(2) The data base required in paragraph (1) shall be comprised of DNA data from genetic markers that are appropriate for human identification, but have no capability to predict biological function. These markers shall be selected by the department and may change as the technology for DNA typing progresses. The results of DNA typing shall be compatible with and uploaded into the CODIS DNA data base established by the Federal Bureau of Investigation. The sole purpose of this data base shall be to identify missing persons and shall be kept separate from the data base established under Chapter 6 (commencing with Section 295) of Title 9 of Part 1.

(3) The Department of Justice shall compare DNA samples taken from the remains of unidentified deceased persons with DNA samples taken from personal articles belonging to the missing person, or from the parents or appropriate relatives of high-risk missing persons.

(4) For the purpose of this data base, “high-risk missing person” means a person missing as a result of a stranger abduction, a person missing under suspicious circumstances, a person missing under unknown circumstances, or where there is reason to assume that the person is in danger, or deceased, and that person has been missing more than 30 days, or less than 30 days in the discretion of the investigating agency.

(b) The department shall develop standards and guidelines for the preservation and storage of DNA samples. Any agency that is required to collect samples from unidentified remains for DNA testing shall follow these standards and guidelines. These guidelines shall address all scientific methods used for the identification of remains, including DNA, anthropology, odontology, and fingerprints.

(c) (1) A coroner shall collect samples for DNA testing from the remains of all unidentified persons and shall send those samples to the

Department of Justice for DNA testing and inclusion in the DNA data bank. After the department has taken a sample from the remains for DNA analysis and analyzed it, the remaining evidence shall be returned to the appropriate local coroner.

(2) After a report has been made of a person missing under high-risk circumstances, the responsible investigating law enforcement agency shall inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing or may collect a DNA sample from a personal article belonging to the missing person if available. The samples shall be taken by the appropriate law enforcement agency in a manner prescribed by the Department of Justice. The responsible investigating law enforcement agency shall wait no longer than 30 days after a report has been made to inform the parents or other relatives of their right to give a sample.

(3) The Department of Justice shall develop a standard release form that authorizes a mother, father, or other relative to voluntarily provide the sample. The release shall explain that DNA is to be used only for the purpose of identifying the missing person. No incentive or coercion shall be used to compel a parent or relative to provide a sample.

(4) The Department of Justice shall develop a model kit that law enforcement shall use when taking samples from parents and relatives.

(5) Before submitting the sample to the department for analysis, law enforcement shall reverify the status of the missing person. After 30 days has elapsed from the date the report was filed, law enforcement shall send the sample to the department for DNA testing and inclusion in the DNA data base, with a copy of the crime report, and any supplemental information.

(6) All samples and DNA extracted from a living person shall be destroyed after a positive identification is made and a report is issued.

(d) All DNA samples shall be confidential and shall only be disclosed to personnel of the Department of Justice, law enforcement officers, coroners, medical examiners, and district attorneys, except that a law enforcement officer may notify a victim's family to disclose whether or not a match has occurred.

(e) (1) A person who collects, processes, or stores DNA or samples from a living person used for DNA testing under this section, who intentionally violates paragraph (6) of subdivision (c) or subdivision (d) is guilty of a misdemeanor punishable by imprisonment in a county jail.

(2) A person who collects, processes, or stores DNA from a living person or samples from a living person used for DNA testing under this section, who intentionally violates paragraph (6) of subdivision (c) or subdivision (d) is liable in civil damages to the donor of the

DNA in the amount of five thousand dollars (\$5,000) for each violation, plus attorney's fees and costs.

14251. (a) The "Missing Persons DNA Data Base" shall be funded by a two dollar (\$2) fee increase on death certificates issued by a local government agency or by the State of California. The issuing agencies may retain up to 5 percent of the funds from the fee increase for administrative costs. This fee increase shall remain in effect only until January 1, 2006, or when federal funding for operation of the data base becomes available if it becomes available before that date.

(b) Funds shall be directed on a quarterly basis to the "Missing Persons DNA Data Base Fund," hereby established, to be administered by the department for establishing and maintaining laboratory infrastructure, DNA sample storage, DNA analysis, and labor costs for cases of missing persons and unidentified remains. Funds may also be distributed by the department to various counties for the purposes of pathology and exhumation as the department deems necessary. The department may also use those funds to publicize the data base for the purpose of contacting parents and relatives so that they may provide a DNA sample for training law enforcement officials about the data base and DNA sampling and for outreach.

(c) The department shall create an advisory committee, comprised of coroners and appropriate law enforcement officials, and interested stakeholders to prioritize the identification of the backlog of unidentified remains. The identification of the backlog may be outsourced to other laboratories at the department's discretion.

(d) (1) The death certificate fee increase shall begin and funds shall be directed to the Missing Persons DNA Data Base Fund beginning January 1, 2001. Funding for year one shall be used to develop the data base and laboratory infrastructure, and to establish Department of Justice protocols and personnel.

(2) The Department of Justice shall begin case analysis in 2002. The Department of Justice shall retain the authority to prioritize case analysis, giving priority to those cases involving children.

(3) If federal funding is made available, it shall be used to assist in the identification of the backlog of high-risk missing person cases and long-term unidentified remains.

(4) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction,

within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

